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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SELL IT SOCIAL, LLC,

Plaintiff,

-against-

ACUMEN BRANDS, INC.,

Defendant.

14 Civ. 3491 (RMB)

DECISION & ORDER

I. Background

On July 31, 2014, Plaintiff Sell It Social, LLC ("Plaintiff" or "Sell It Social") filed an Amended Complaint against Defendant Acumen Brands, Inc. ("Defendant" or "Acumen"), an Arkansas-based operator of the "Country Outfitter" retail website which offers for sale "country and western apparel." (Am. Compl., dated July 25, 2014 ("Compl."), ¶ 1.) Plaintiff, a New York company and itself the owner and operator of a country and western apparel website, alleges that Acumen sent a letter to its apparel vendors, dated May 5, 2014, which "adopt[ed], communicat[ed], and threatened enforcement of a coercive policy of refusing to deal with vendors that do business with Sell It Social" and which "disseminat[ed] . . . false, misleading, and defamatory claims about Sell It Social and its management to those same vendors." (Id. ¶ 2.) The Complaint also alleges that Acumen's conduct "harmed competition in [the] market, likely leading to increased prices and reduced innovation and consumer choice." (Id. ¶ 100.) Plaintiff asserts that Acumen's conduct constituted "monopolization" and/or "attempted monopolization" in violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2 ("Sherman Act"). Plaintiff also brings common law claims of defamation and tortious interference with prospective business advantage. Plaintiff seeks

$50,000,000 in compensatory damages, plus "punitive damages based on defendant's malicious conduct," and a Court order "enjoining Acumen from further violations of the antitrust laws." (Id. at 35–36.)

On August 25, 2014, Defendant filed a motion to dismiss the Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, arguing, among other things, that (1) Plaintiff fails to plead "antitrust injury" because "[t]he complaint includes no allegations about negative competitive effects in a properly defined relevant market [and] no allegations about decreased output or higher prices"; (2) Plaintiff does not adequately allege that Acumen's statements were false statements of fact "that could form the basis of a defamation claim"; and (3) because Plaintiff has not sufficiently alleged a defamation claim, Plaintiff "has not alleged an independent tort to support its tortious interference claim." (Mem. of Law in Supp. of Def.'s Mot. to Dismiss, dated Aug. 25, 2015 ("Def. Mem."), at 6–15, 18, 21–22.)

On September 25, 2014, Plaintiff filed an opposition, arguing, among other things, that (1) "[t]he Complaint adequately alleges that Acumen's conduct harming Sell It Social also harms consumers due to a reduction in competition in the Country and Western Specialty Online Retail Market"; (2)"[t]aken together, the assertions in Acumen's May 5, 2014 letter [to Acumen's vendors] may . . . reasonably be understood to imply that . . . Sell It Social made improper use of [Defendant's] design, imagery and intellectual property"; and (3) the independent tort of defamation "constitutes the requisite 'wrongful means' necessary to sustain a tortious interference claim." (Pl.'s Mem. of Law in Opp'n to Def.'s Mot. to Dismiss, dated September 25, 2014 ("Pl. Opp'n."), at 18, 19–20, 25.)

On October 9, 2014, Defendant filed a reply. (See Reply Mem. of Law in Supp. of Def.'s Mot. to Dismiss, dated October 9, 2014 ("Def. Reply").) On March 19, 2015, the Court heard oral argument. (See Hr'g Tr., dated March 19, 2015.)

For the reasons stated below, Defendant's motion to dismiss is granted in part and denied in part.[1]

Additional Background

In "early 2014," Plaintiff decided to enter into the Country and Western Specialty Online Retail Market, and planned to launch the Country Habit website. (Compl. ¶ 52.) Before then, Plaintiff "ha[d] secured an engaged country and western lifestyle audience that exceeded two million consumers . . . as well as commitments from various vendors in the market to sell their products through the Country Habit website." (Id. ¶ 53.) Plaintiff claims it "was in a strong position to enter the Country and Western Specialty Online Retail Market." (Id. ¶ 53.)

Sometime in early 2014, an independent information technology contractor working for Plaintiff prepared a "skin" or "mock-up" of Defendants' Country Outfitter website "as part of his research and diligence in preparing the Country Habit website." (Id. ¶ 86.) According to Defendants, Plaintiff's "skin" website was a "direct copy" of the Country Outfitter website. (Def. Mem. at 2.) According to Plaintiff, "'skinning' is a common research and diligence practice used in website development." (Id.) On March 11, 2014, "[a]s a result of [Plaintiff's] inadvertent error, [the 'skin' website] was publicly available online for a short period of time, believed to be no more than 8–12 hours, before Sell It Social recognized the error and made it unavailable." (Id.)

[1] Any issues raised by the parties not specifically addressed herein were considered by the Court on the merits and rejected.

According Plaintiff, the March 11, 2014 "skin" website "never had the functionality necessary to make it usable for commerce: customers could not view or select products or make purchases." (Id.)

The publication of the "skin" website on March 11, 2014, according to Plaintiff, occurred more than six weeks prior to the launch of Sell It Social's Country Habit website. (Id. ¶ 85.) Following this publication incident, Acumen's Vice President of Marketing Operations, Ben Roberts, wrote to Sell It Social's President, Heath Wolfson, in a text message on March 11, 2014: "No worries, not the first time people have accidentally or purposefully copied part of our site. We had someone copy our squeeze page code down to the analytics id once." (Id. ¶ 88.)

As noted, Sell It Social launched its Country Habit website on April 22, 2014. (Id. ¶ 64.) During the first two weeks of operation, Country Habit had "strong[] sales." (Id. ¶ 65.) According to Plaintiff, "Acumen recognized that Sell It Social was a unique competitive threat due to the combination of Sell It Social's successful track record as a social commerce retailer and its now demonstrated ability to attract key vendors." (Id. ¶ 66.) Plaintiff alleges that "Acumen responded to this threat with a campaign of exclusionary, tortious and defamatory conduct aimed at disrupting Country Habit's business and restraining competition in the Country and Western Specialty Online Retail Market in order to maintain the dominant market position of its Country Outfitter website." (Id.)

The Complaint alleges that, on May 5, 2014, Acumen's CEO, John James, sent the letter referenced above to Acumen's vendors. The letter stated as follows:

> Dear Valued Supplier,
>
> This Letter will serve as notice regarding our position towards the website Country Habit.com. We find their blatant use of our Country Outfitter.com designs, imagery and intellectual property deplorable.
>
> Our entire industry was built around trust, honesty, and respect. Country Habit chose to enter our industry without any of these tenants [*sic*].

> After an initial discussion with their leadership, Country Habit retracted their most flagrant abuses but continues to use tactics of seeming association with Country Outfitter to try and secure products from our supplier base. We ask that you take into full consideration forgoing [sic] all current or future business with this company.
>
> We value and appreciate the partnership we have built with your brands, and we trust you understand our position and will stand alongside us.

(Id. ¶ 72.)

Sell It Social alleges that, in sending the May 5, 2014 letter to its vendors, Acumen "convey[ed] to vendors the terms of [an] Exclusive Dealing Policy: vendors that do business with Sell It Social risk not being permitted to sell through Country Outfitter." (Id. ¶ 70.) According to the Complaint, "[v]endors in the Country and Western Specialty Online Retail Market that have learned of Acumen's Exclusive Dealing Policy have terminated their contracts with Sell It Social as a result" and "[o]ther vendors interested in doing business with Sell It Social have similarly refrained from doing so as a result of Acumen's Exclusive Dealing Policy." (Id. ¶ 73).

Sell It Social also alleges that the May 5, 2014 Letter "falsely claims that the Country Habit website uses Country Outfitter's website designs, imagery and intellectual property." (Id. ¶ 80.) According to Sell It Social, "[t]he design and layout of Country Habit's website is not based upon Country Outfitter's site in any respect, but is instead a replica of Sell It Social's previously developed Rebel Circus website." (Id. ¶ 81.) Plaintiff alleges that, at the time of the May 5, 2014 Letter, "Acumen kn[ew] that Sell It Social did not misappropriate or use Acumen's designs, imagery and intellectual property." (Id. ¶ 89.)

According to Sell It Social, "Acumen continues to falsely communicate to vendors that Sell It Social and its principals have misappropriated its trade dress and intellectual property." (Id. ¶ 91.) Sell It Social alleges that, on an unspecified date, "a representative of Acumen told Ferrini [a

boot vendor] that Sell It Social 'copied their code' and 'stole their site with intention to create confusion in the marketplace.'" (Id. ¶ 91.)

The Complaint alleges that Acumen "has caused lost sales and lost profits for Sell It Social in the Country and Western Specialty Online Retail Market . . . as Acumen denies Sell It Social the opportunity to compete for and win the sales today that will allow Sell It Social to become an even more effective competitor in the future." (Id. ¶ 97.)

II. Legal Standard

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678. "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not shown—that the pleader is entitled to relief." Id. at 678–679 (internal punctuation omitted).

"[A]ntitrust standing is a threshold, pleading-stage inquiry and when a complaint by its terms fails to establish this requirement we must dismiss it as a matter of law." Gatt Commc'ns, Inc. v. PMC Associates, L.L.C., 711 F.3d 68, 76 (2d Cir. 2013) (quoting NicSand, Inc. v. 3M Co., 507 F.3d 442, 450 (6th Cir. 2007) (en banc)). A plaintiff must "plausibly . . . allege [] that it suffered a special kind of antitrust injury," id., and "must allege not only cognizable harm to herself, but an adverse effect on competition market-wide." Todd v. Exxon Corp., 275 F.3d 191, 213 (2d Cir. 2001). Plaintiff must also "demonstrate that its injury . . . flows from that which makes defendants' acts unlawful." Gatt Commc'ns, 711 F.3d at 76 (internal quotation marks and alteration omitted).

III. Analysis

(1) Sherman Act Claims

Antitrust Standing

A three-step process is used for determining whether a plaintiff has sufficiently alleged antitrust injury. Gatt Commc'ns, 711 F.3d at 76. "First, the party asserting that it has been injured by an illegal anticompetitive practice must identify the practice complained of and the reasons such a practice is or might be anticompetitive. [Second], we identify the actual injury the plaintiff alleges. This requires us to look to the ways in which the plaintiff claims it is in a worse position as a consequence of the defendant's conduct. [Third], we compare the anticompetitive effect of the specific practice at issue to the actual injury the plaintiff alleges. It is not enough for the actual injury to be causally linked to the asserted violation. Rather, in order to establish antitrust injury, the plaintiff must demonstrate that its injury is of the type the antitrust laws were intended to prevent and that flows from that which makes or might make defendants' acts unlawful." Gatt Commc'ns, 711 F.3d at 76 (internal punctuation and citations omitted). To satisfy the third step, Plaintiff must demonstrate that its injury is "attributable to an anticompetitive aspect of the challenged conduct." In re Aluminum Warehousing Antitrust Litig., No. 13–md–2481, 2014 WL 4277510, at *16 (S.D.N.Y. Aug. 29, 2014)

Plaintiff fails to allege antitrust injury. With respect to step one, Plaintiff fails plausibly to allege "an adverse effect on competition market-wide." Todd v. Exxon Corp., 275 F.3d at 213. Plaintiff's sole allegation with respect to market-wide effects is that Defendant's alleged "Policy" may "likely lead[] to increased prices and reduced innovation and consumer choice." (Id. ¶ 100.) But Plaintiff provides no factual support (allegations) for this speculative conclusion. See Carell v.

Shubert Organization, Inc., 104 F. Supp. 2d 236, 266 (S.D.N.Y. 2000) (where plaintiff's allegation of a "reduction in output" was "conclusory . . . with no support in the [c]omplaint, and do[es] not adequately plead antitrust injury."); US Airways Group, Inc. v. British Airways PLC, 989 F. Supp. 482, 489 (S.D.N.Y. 1997) (where the "general and conclusory allegation" that plaintiff's alleged exclusion from the market has "limited consumer choice for air carriers . . . [did] not sufficiently allege the antitrust injury required for standing"). Even assuming, arguendo, that Defendant's conduct may result in price increases, Plaintiff would still have failed plausibly to allege "an adverse effect on competition market-wide" because the Complaint does not allege "the amount of competition that defendants' [conduct] foreclosed," Rock TV Entertainment, Inc. v. Time Warner, Inc., No. 97 Civ. 0161, 1998 WL 37498, at *4 (S.D.N.Y. Jan. 29, 1998), or that any increased prices would be "above competitive levels." Rebel Oil Co., Inc. v. Atlantic Richfield Co., 51 F.3d 1421, 1434 (9th Cir. 1995) ("[A]n act is deemed anticompetitive under the Sherman Act only when it . . . raises prices above competitive levels . . . ." (emphasis in original)); see also Cargill, Inc. v. Monfort of Colorado, Inc., 479 U.S. 104, 115 (1986) ("[I]t is in the interest of competition to permit dominant firms to engage in vigorous competition, including price competition." (internal quotation marks and citation omitted)).

While Plaintiff alleges an adverse effect upon its individual business prospects, this alone does not suffice to plead anticompetitive harm. See NYNEX Corp. v. Discon, Inc., 525 U.S. 128, 135 (1998) ("[T]he plaintiff here must allege and prove harm, not just to a single competitor, but to the competitive process, i.e., to competition itself."); see also Brooke Group Ltd. v. Brown & Williamson Tobacco Corp., 509 U.S. 209, 225 (1993) ("Even an act of pure malice by one business competitor against another does not, without more, state a claim under the federal antitrust laws; those laws do not create a federal law of unfair competition or purport to afford remedies for all

torts committed by or against persons engaged in interstate commerce." (internal quotation marks omitted)).

Even assuming, arguendo, that Plaintiff had satisfied step one, Plaintiff would still have failed to satisfy the (two) remaining steps of the antitrust injury analysis. With respect to step two, Plaintiff's alleged "actual injury" is limited to its own "loss of business from existing [and potential] vendors" as a result of Acumen's "Exclusive Dealing Policy." (Compl. ¶¶ 73, 97, 112.) See Gatt Commc'ns, 711 F.3d at 76. With respect to step three, Plaintiff fails to allege injury that is "attributable to an anticompetitive aspect of the challenged conduct." In re Aluminum Warehousing Antitrust Litig., 2014 WL 4277510, at *16. That is, Plaintiff alleges "loss of business from existing [and potential] vendors," not from market-wide anticompetitive effects. See Gatt Commc'ns, 711 F.3d at 77 (where "[plaintiff] has not been forced to pay higher prices for a product, as customers who are victimized by price-fixing schemes might."); Yong Ki Hong v. KBS America, Inc., 951 F. Supp. 2d 402, 418 (E.D.N.Y. 2013) (where "the only injury that plaintiffs claim to have suffered as a result of defendants' allegedly unlawful activities is lost revenue . . . .").

Exclusionary Conduct

Even assuming, arguendo, that Plaintiff had standing to bring its antitrust claims, the Court would likely find that it fails plausibly to allege that Defendant engaged in "anticompetitive exclusionary conduct," which is a substantive element of a monopolization claim under Section 2 of the Sherman Act. New York v. Actavis, PLC, No. 14 Civ. 7473, 2014 WL 7015198 at *35 (S.D.N.Y. Dec. 11, 2014). Plaintiff argues that it "has adequately alleged exclusive dealing by a monopolist" by virtue of Defendant's alleged "Exclusive Dealing Policy." (Pl. Opp'n. at 16.) But "exclusive dealing is not uniformly anticompetitive," and in order to plead exclusionary conduct through an exclusive dealing policy, Plaintiff "must allege as a threshold matter . . . a substantial

foreclosure of competition" in the relevant market, which Plaintiff has failed to do. Xerox Corp. v. Media Sciences Intern., Inc., 511 F. Supp. 2d 372, 389 (S.D.N.Y. 2007) (quoting Ford Piano Supply Co. v. Steinway & Sons, No. 85 Civ. 1284, 1988 WL 3488, *1, (S.D.N.Y. Jan. 13, 1988); see also Jefferson Parish Hosp. Dist. No. 2 v. Hyde, 466 U.S. 2, 45 (1984) ("Exclusive dealing is an unreasonable restraint on trade only when a significant fraction of buyers or sellers are frozen out of a market by the exclusive deal.").

As noted, Plaintiff has not alleged the degree of competition that has been foreclosed by Defendant's conduct, much less that there has been "a substantial foreclosure of competition." Xerox Corp., 511 F. Supp. 2d at 389. Indeed, as stated by Plaintiff in the Complaint, Defendant's "Exclusive Dealing Policy" applied only to Plaintiff. Plaintiff does not say that Defendant's policy foreclosed any of Defendant's other competitors from participating in the market. (See Pl. Opp'n. at 16 ("The Complaint alleges that Acumen's excusive-dealing policy forecloses Sell It Social from access to a substantial portion of cowboy and cowgirl boots . . . .").) Simply put, Plaintiff's allegation that it was excluded from the market, without more, does not suffice to plead "exclusionary conduct" under Section 2 of the Sherman Act. See County of Tuolumne v. Sonora Community Hosp., 236 F.3d 1148, 1158 (9th Cir. 2001) ("This court has held that the elimination of a single competitor, standing alone, does not prove anticompetitive effect." (internal quotations omitted)); Military Servs. Realty, Inc. v. Realty Consultants of Virginia, 823 F.2d 829, 832 (4th Cir.1987) ("The elimination of a single competitor standing alone, does not prove anti-competitive effect.").[2]

[2] The Court need not address the remaining elements of Plaintiff's claims of monopolization and attempted monopolization under Section 2 of the Sherman Act. See In re LIBOR-Based Financial Instruments Antitrust Litig., 935 F. Supp. 2d 666, 685 (S.D.N.Y. 2013).

(2) Defamation Claim

Defendant argues that Plaintiff does not adequately allege that any of Acumen's statements "is a false statement of fact that could form the basis of a defamation claim." (Def. Mem. at 22.) Plaintiff counters that "[t]aken together, the assertions in Acumen's May 5, 2014 letter may . . . reasonably be understood to imply [falsely] that . . . Sell It Social made improper use of [Defendant's] design, imagery and intellectual property." (Pl. Opp'n. at 19–20.)

To state a claim of defamation under New York law, Plaintiff must plead "(1) a false statement that is (2) published to a third party (3) without privilege or authorization, and that (4) causes harm . . . ." Stepanov v Dow Jones & Co., Inc., 120 A.D.3d 28, 34 (First Dep't. 2014); see Peters v. Baldwin Union Free School Dist., 320 F.3d 164, 169 (2d Cir. 2003).

Defendant does not dispute that Plaintiff adequately pleads the second, third and fourth elements of a defamation claim, i.e., that the May 5, 2014 letter was publicized to Acumen's vendors, that it was communicated without Sell It Social's authorization, and that it allegedly caused harm to Sell It Social. Defendant does contend that the statements contained in the letter are "substantially true" because Plaintiff "nowhere directly denies that it copied Acumen's code." (Def. Mem. at 20.)

The Court concludes that Plaintiff has pled sufficiently the element of falsity. "In New York, truth or falsity is determined by the common law standard of substantial truth." Lopez v. Univision Commc'ns, Inc., 45 F. Supp. 2d 348, 357 (S.D.N.Y. 1999). A statement is substantially true and not actionable "if the published statement could have produced no worse an effect on the mind of a reader than the truth pertinent to the allegation." Mitre Sports Int'l Ltd. v. Home Box Office, Inc., 22 F. Supp. 3d 240, 254 (S.D.N.Y. 2014) (quoting Guccione v. Hustler Magazine, Inc.,

800 F.2d 298, 302 (2d Cir. 1986)). Conversely, a statement may be considered false if it "would have a different effect on the mind of the reader from that which the pleaded truth would have produced." Lopez, 45 F. Supp. 2d at 357. The Court must read the statement "in context to test [its] effect on the average reader, not to isolate particular phrases but to consider the publication as a whole." Immuno AG. v. Moor–Jankowski, 77 N.Y.2d 235, 250 (1991).

Read "as a whole," the May 5, 2014 letter contains two statements that appear to meet the standard of falsity. These are: (1) that Sell It Social "blatant[ly] use[d] . . . Country Outfitter.com designs, imagery and intellectual property"; and (2) that Sell It Social "continues to use tactics of seeming association with Country Outfitter to try and secure products from our supplier base." These statements, when combined with the letter's assertions regarding Plaintiff's lack of "trust, honesty, and respect," may have the effect of accusing Plaintiff of intentionally using Defendant's intellectual property in order to confuse Acumen's suppliers and to harm Acumen's business. It is clear to the Court that the statements contained in Defendant's May 5, 2015 letter "would have a different effect on the mind of the reader from that which the pleaded truth would have produced." Lopez, 45 F. Supp. 2d at 357. [3]

The Court also concludes that Plaintiff has stated a claim of defamation based upon verbal comments allegedly made sometime after May 5, 2014 by a representative of Acumen to Ferrini, one of the boot vendors with whom Sell It Social had contracted. (Compl. ¶ 91.) According to Plaintiff, Defendant's representative "told Ferrini that Sell It Social 'copied their code' and 'stole

[3] While Plaintiff admits that it used the Country Outfitter website as the basis for a "skin" or "mock-up" website, it also alleges that "skinning" is a common industry practice; that the March 11, 2014 publication of the "skin" website was inadvertent; and that the "skin" website was publicly accessible for only 8–12 hours. (Compl. ¶ 86.) Plaintiff further alleges that the "skin" website was completely non-functional, and that the functional website it launched on April 22, 2014 had no similarities to the Country Outfitter website. (Id. ¶ 81.)

their site with intention to create confusion in the marketplace.'" (Id.) These alleged comments are substantially similar to the statements contained in the May 5, 2014 letter and, for the reasons discussed above, are plausibly described as defamatory. Plaintiff is not required to allege the specific "time, place and manner" of the statement where, as here, "plaintiff . . . was not present when the allegedly defamatory words were spoken." Sterling Interiors Group, Inc. v. Haworth, Inc., No. 94 Civ. 9216, 1996 WL 426379, at *24 (S.D.N.Y. July 30, 1996) ("The allegations at bar, which identify the principal responsible for one of the statements . . . the corporations to whom the statements were made, the time frame within which they were made, and what was said, pass muster under Rule 8(a).").

The Court finds unpersuasive Defendant's argument that Plaintiff is a "limited public figure" and, therefore, must plead "malice" to state a claim of defamation. (Def. Mem. at 21.) A limited public figure is one who has "(i) successfully invited public attention to his views in an effort to influence others prior to the incident that is the subject of the litigation (ii) voluntarily injected himself into a public controversy related to the subject of the litigation; (iii) assumed a position of prominence in the public controversy; and (iv) maintained regular and continuing access to the media." Contemporary Mission, Inc. v. New York Times Co., 842 F.2d 612, 617 (2d Cir. 1988). Plaintiff is not a limited public figure because, among other reasons, the Complaint does not allege that Plaintiff injected itself into "a public controversy."

(3) Tortious Interference with Prospective Business Advantage Claim

Defendant's (sole) argument against Plaintiff's tortious interference claim is that Plaintiff "has not sufficiently alleged a defamation claim, and therefore has not alleged an independent tort to support its tortious interference claim." (Def. Mem. at 22.) Because the Court has concluded that Plaintiff has stated a claim of defamation against Defendant, (see supra at 11–13), the Court

also concludes that Plaintiff has alleged an independent tort to support the "wrongful means" element of its tortious interference claim. See Catskill Development, L.L.C. v. Park Place Entertainment Corp., 547 F.3d 115, 132 (2d Cir. 2008) ("[A] defendant's commission of a crime or an independent tort clearly constitutes wrongful means" (internal quotation marks omitted)). The Court further concludes that Plaintiff has satisfied (unopposed) the remaining elements of its tortious interference claim, i.e., that (1) "[P]laintiff had business relations with [] third part[ies]"; (2) "[D]efendants interfered with those business relations"; and (3) "[D]efendant['s] acts injured the relationship[s]." Lombard v. Booz-Allen & Hamilton, Inc., 280 F.3d 209, 214 (2d Cir. 2002).[4]

IV. Conclusion and Order

For the reasons stated herein, Defendant's motion to dismiss [#26] is granted (with prejudice) with respect to Plaintiff's claims of monopolization and attempted monopolization under Section 2 of the Sherman Act. (See Hr'g Tr., dated June 26, 2014.) Defendant's motion is denied with respect to Plaintiff's claims of defamation and intentional interference with prospective business advantage.[5]

The parties are directed to appear on April 14, 2015 at 11:15 a.m. for a status conference.

Dated: New York, New York
March 20, 2014

RMB

RICHARD M. BERMAN, U.S.D.J.

[4] The Court is not here ruling upon the ultimate merits of Plaintiff's defamation and tortious interference claims.

[5] Because there is complete diversity of citizenship between the parties and the amount in controversy exceeds $75,000, the Court has subject matter jurisdiction over Plaintiff's state law claims of defamation and tortious interference with prospective business advantage. See 28 U.S.C. § 1332.